

In the Matter of BLUE DIAMOND CORPORATION, EMPLOYER *and*
BUILDING MATERIAL & DUMP TRUCK DRIVERS LOCAL UNION #420,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN & HELPERS OF AMERICA, AFL, PETITIONER

In the Matter of BLUE DIAMOND CORPORATION, EMPLOYER *and*
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 12,
AFL, PETITIONER

In the Matter of BLUE DIAMOND CORPORATION, EMPLOYER *and*
UNITED CEMENT, LIME & GYPSUM WORKERS, INTERNATIONAL UNION
LOCAL 126, AFL *and* BUILDING MATERIAL & DUMP TRUCK DRIVERS
LOCAL UNION #420, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL *and*
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL No. 12, AFL

*Cases Nos. 21-RC-496, 21-RC-498, and 21-RM-85, respectively.—
Decided March 14, 1949*

DECISION

ORDER

AND

DIRECTION OF ELECTION

Upon separate petitions duly filed, a consolidated hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing the Gypsum Workers moved to dismiss the petitions of the Teamsters and the Operating Engineers on the grounds that the units set forth therein are inappropriate. The hearing officer referred the motion to the Board for ruling thereon. For reasons appearing hereinafter, the motion is hereby granted.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

*Chairman Herzog and Members Houston and Murdock.

81 N. L. R. B., No. 231.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner in Case No. 21-RC-496, herein called the Teamsters; the Petitioner in Case No. 21-RC-498, herein called the Operating Engineers; and the United Cement, Lime & Gypsum Workers, International Union Local 126, AFL, herein called the Gypsum Workers, are labor organizations claiming to represent employees of the Employer.

3. For the reasons stated hereinafter, no question affecting commerce exists concerning the representation of employees of the Employer in Cases Nos. 21-RC-496 and 21-RC-498 within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act. We do, however, find that a question affecting commerce exists concerning the representation of employees of the Employer in Case No. 21-RM-85, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.¹

4. *The appropriate unit:* The Teamsters seeks a unit of all production employees in the Employer's warehouses No. 1 and No. 2, the putty plant, cement packing plant and stucco mill, excluding all other employees. The Operating Engineers seeks a unit of all production employees in the cement grinding plant, raw storage and batch plant, and all maintenance employees excluding maintenance employees in the automotive machine shop and all other employees. Together these two units comprise all of the employees at the Employer's Alameda Street plant, which is the only plant involved in this proceeding. The unit described in the Employer's petition is all production and maintenance employees in the Alameda Street plant, excluding reinforcing steel workers, steel sash warehousemen, automotive stockroom man, yard and building janitors, gardeners, gas station operator, truck driver, office, clerical and professional employees, watchmen, guards, and supervisors. In the alternative, the Employer regards as appropriate the two units petitioned for by the Teamsters and Operating Engineers. The Gypsum Workers contends that the units sought by the Teamsters and Operating Engineers are inappropriate in view of the history of collective bargaining, and that only the more compre-

¹ The Gypsum Workers contends that its collective bargaining agreement with the Employer covering the employees involved herein is a bar to these proceedings. However, the record discloses that this agreement, effective October 1, 1947, was to remain in effect until September 30, 1948. It contains no provision for automatic renewal. The instant petitions were filed after the expiration of this contract. Although at the time the petitions were filed the Employer and the Gypsum Workers were negotiating for contract renewal, no agreement had been reduced to writing. Accordingly, we find that the contract is not a bar. *Matter of E. L. Bruce Company*, 74 N. L. R. B. 1354; *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

hensive unit of all production and maintenance employees, as described in the Employer's first alternative request is appropriate.

The Employer is engaged in the manufacture and production of basic building material. The Gypsum Workers has been recognized, under yearly contracts with the Employer since 1941, as the sole collective bargaining representative of the production and maintenance employees at this plant, in a unit including the employees sought to be represented by the Teamsters and the Operating Engineers. The record shows that the same general working conditions and privileges such as wages, hours of employment, vacation and seniority, are enjoyed by all the Employer's employees. New employees are hired directly from the outside and job vacancies are posted in the plant and can be bid for by any employee. The record also establishes that on occasion employees have been transferred from one operation to another in the plant.

We find nothing in the record to indicate that the employees in the unit sought by either the Teamsters or the Operating Engineers comprise groups of recognized craftsmen, or that a special community of interest distinguishes either of the groups from the other production and maintenance employees. In view of these circumstances and in view of the bargaining history in which both groups of employees have been represented by the Gypsum Workers in a single unit, we perceive no justification for severing the employees in question from the existing production and maintenance unit. Accordingly, we find that the unit sought by the Teamsters in Case No. 21-RC-496, and the unit sought by the Operating Engineers in Case No. 21-RC-498, are inappropriate, and we shall, therefore, dismiss the petitions in these cases.

We find that the following employees may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees in the Employer's Alameda Street plant, Los Angeles, California,² excluding reinforcing steel workers, steel sash warehousemen, automotive mechanics, tiremen, greasers, washers, automotive stockroom man, yard and building janitors, gardeners, gas station operator, truck drivers, office, clerical and professional employees, watchmen, guards, and supervisors as defined in the Act.

ORDER

IT IS HEREBY ORDERED that the petitions filed herein in Cases Nos. 21-RC-496 and 21-RC-498, be, and they are hereby, dismissed.

² Employees classified as "equipment operator and repairman," excluded from Voting Group 2, in Case No. 21-RC-347 et al., are included in the above-described unit.

DIRECTION OF ELECTION³

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-first Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Building Material & Dump Truck Drivers Local Union #420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and International Union of Operating Engineers, Local No. 12, AFL; or by United Cement, Lime & Gypsum Workers, International Union Local 126, AFL, or by neither.

³ Any participant in the election herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.